

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2005-000301-001 DT

06/15/2005

HONORABLE MARK R. SANTANA

CLERK OF THE COURT
K. Wendroff
Deputy

FILED:_____

STATE OF ARIZONA

DENISE BOODE

v.

DARREN R WIETECHKA (001)

ROBERT W PRECHT

GILBERT CITY COURT
REMAND DESK-LCA-CCC

MINUTE ENTRY

I. Jurisdiction

This Court has jurisdiction pursuant to Article VI, Section 14 of the Arizona Constitution.

II. Facts

On November 10, 2002, appellant (defendant) and the victim went out for dinner and returned to the victim's home. The defendant and victim had previously dated for approximately three years but the relationship had ended. An argument arose in the victim's bedroom and the defendant threw the victim on the bed and began to choke her by placing his hands around her neck and shoving her head into the bed.

At trial the victim testified that there were no visible injuries the night of the incident, but the next day the injuries to her neck started turning a yellow, greenish color, and through the week progressed and turned dark purple and then black. Photographs of the victim's injuries were taken within a week of the incident. Pursuant to A.R.S. § 13-1203A.1, the State charged that the defendant had assaulted the victim, causing physical injury to her. Trial was held in the Gilbert Municipal Court on February 12, 13 and 17, 2004.

At trial, the victim testified that the defendant had injured her. She also testified that she had been seeing a chiropractor for maintenance prior to the incident, and after the assault was treated for her neck. The victim's son also testified as to injuries. The injury photographs were admitted into evidence.

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On the first day of trial defense counsel made a motion for supplemental disclosure regarding medical treatment of the victim. The State responded that medical bills and letters had been provided to the defendant, but that they would only be used during the restitution hearing. The State indicated that it did not have the victim's actual treatment records in its possession. The court denied the motion. Defense counsel then moved to dismiss for lack of disclosure; that motion was also denied. Finally, defense counsel requested that the victim's doctor be subpoenaed. The victim's doctor/chiropractor was listed on the Notice of Defenses filed on October 27, 2003. The trial court asked defense counsel whether he had interviewed the victim's doctor and defense counsel indicated that he had not. The request was denied. The trial court denied the motions and request, determining that the motions/request were untimely and would not produce relevant information.

Following trial to the court, defendant was convicted of misdemeanor assault.

III. Analysis

A. Did the trial Court commit reversible error when it denied the Defendant's motions regarding disclosure and request for subpoena?

For the reasons set forth below, the trial court did not commit reversible error in denying the defendant's motions regarding disclosure and defendant's request for a subpoena.

First, decisions on motions to compel discovery and motions to dismiss are not appealable. Canion v. Cole, 208 Ariz. 133, 91 P.3d 355 (Ct. App. 2004); State v. Meza, 203 Ariz. 50, 50 P.3d 407 (Ct. App. 2002). The defendant's appeal should be denied for this reason alone.

Second, the motions and request for subpoena were untimely. Arizona Rule of Criminal Procedure 16.1(b) requires that all motions be made no later than 20 days before trial. Both the motions and the request for subpoena were made on the first day of trial. Rule 16.1(c) provides that all motions that are not filed by the 20 day deadline *shall be precluded* unless the basis of the motion was not known by the deadline, could not have been known and the moving party raised the issue promptly upon hearing about it (emphasis, the Court's). In this matter, the defendant was requesting the production of medical records from the state and the victim's chiropractor.

The record indicates that the state provided all of the medical records within its control; there was no basis for either the motions to compel or dismiss. Moreover, because the chiropractor was listed in the October 27, 2003 Notice of Defenses, the defendant knew that doctor's identity at least ninety days before trial. But defense counsel neither interviewed the chiropractor nor subpoenaed that doctor. At trial, defense counsel did not provide any justification for his failure to timely request a subpoena or file his discovery motions. As required by Rule 16.1(c) the trial court correctly denied the motions and request for subpoena.

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Finally, defendant fails to establish that the medical records were relevant and that he had a substantial need for that information. Defendant argues that the medical records might have shown that the victim had a preexisting neck injury for which she was already being treated. According to defendant, if the records had shown such an injury, that evidence could have been both impeaching and exculpatory. Rule 15.1(b) of the Arizona Rules of Criminal Procedure provides that the trial court may order additional disclosure if the defendant shows that there is a “substantial need” for the information. But the discovery rules do not permit requests for additional disclosure based solely on speculation. State v. Kevil, 111 Ariz. 240, 242, 527 P.2d 285, 287 (1974).

The victim testified that before the incident she had seen the chiropractor only for “maintenance” and not for a neck injury. The state also presented evidence concerning the victim’s bruising. Defendant did not offer any evidence that the medical records would prove that the defendant did not choke the victim, that the victim’s neck was not bruised or injured or that she had a preexisting neck injury. The defendant did not make any demonstration that the medical records would show the absence of an injury or that no bruising had occurred. Under these circumstances, the defendant’s discovery requests were based on pure speculation; no substantial need could be established. The trial court correctly denied the discovery requests as irrelevant.

B. Did the trial Court commit reversible error by denying appellant’s motion for directed verdict based on lack of evidence?

The victim testified that the defendant attacked her, choked her and caused bruising to her neck. The victim’s son also testified as to the resulting bruising. Photographs of the bruising were also admitted into evidence. There was substantial evidence to support the conviction and the trial court correctly denied the defendant’s Rule 20 motion.

C. Did the trial Court err by ordering restitution for medical expenses?

Defendant argues that the trial court erroneously ordered restitution for medical expenses. But the transcript of that hearing indicates that the Court found there was insufficient basis to support an award of the medical bills and only awarded restitution for lost wages. No error occurred.

IV. Conclusion

This Court concludes that the trial court did not commit error and that the defendant’s conviction should be affirmed

IT IS ORDERED:

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- (1) Affirming the conviction and sentence;**
- (2) Remanding this case to the Gilbert Municipal Court for all further proceedings.**